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May 21, 2020

File No. 37527.49

VIA ECF

The Honorable Steven Tiscione
United States Magistrate Judge
Eastern District Court of New York
100 Federal Plaza
Central Islip, NY 11722

Re: *Public Administrator/McElveen v. County of Nassau, et al.*,
17-cv-05623 (GRB)(ST)

Dear Judge Tiscione:

As you are aware, we represent the Defendants ("Defendants") in the above-captioned matter. We write this missive in reply to plaintiff's letter dated May 12, 2020 in which a request is made for a pre-motion conference to seek leave of the Court to file a motion to compel discovery. (See DE # 37).

Pursuant to an Order dated March 18, 2020, the Honorable Court did in fact issue a directive for all Documents and Interrogatories to be produced by May 8, 2020. In furtherance of this directive, plaintiff's counsel subsequently sent the undersigned counsel an email dated April 21, 2020, with an attached good faith letter inquiring about the status of our responses to their discovery demands. However, I did not see this email and the attached letter until May 15, 2020 when plaintiff filed his aforementioned request for a pre-motion conference. The reason for this oversight is that during the period when plaintiff's subject email was sent, there was an attempted cyberattack on my firm's computer network which forced our IT department to have to shut the whole system down for about one (1) week. As a result of this shutdown, I simply missed this email. For this, I extend my apologies to the Court and to plaintiff's counsel.

However, pursuant to **section III A.** titled (Discovery or Other Non-Dispositive Motions) of Your Honor's individual rules, the parties are directed to make a good faith effort to resolve disputes including discussion either by telephone or in person, before making a motion. To date, there has been no attempt by plaintiff's counsel to contact me to facilitate any type of discussion in furtherance of resolving the matter since service of his good faith letter on April 21, 2020. I have always been responsive to plaintiff's office whenever they have emailed or called me, so I'm a bit surprised that there was no attempt made to contact me by phone or letter after their April 21, 2020

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email went unanswered. In light of the technical difficulties encountered by my office in addition to the fact that there was no attempt made by plaintiff's counsel to meet and confer via telephone or in person, the undersigned counsel is respectfully requesting that the Honorable Court deny plaintiff's request for a pre-motion conference to seek leave to file a motion to compel discovery, as such a conference is pre-mature at this time.

Very truly yours,

Dale McLaren

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LEWIS BRISBOIS BISGAARD & SMITH LLP

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Cc: Charles Silverstein, Esq. (via ECF)